STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 8, 2000
v	No. 210732 Detroit Recorder's Court
RONALD C. GUENTHER, Defendant-Appellant.	LC No. 97-008281

Before: Smolenski, P.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Defendant was convicted by jury of involuntary manslaughter, MCL 750.321(c); MSA 28.553(c). He was sentenced to 6½ to 15 years. Defendant appeals as of right. We affirm.

I

Defendant first argues that the trial court committed reversible error when it gave a jury instruction on flight. Instructions are reviewed in their entirety to determine if they are sufficient to protect defendant's rights. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995). No judgment or verdict is to be set aside or reversed on the ground of misdirection of the jury unless the error complained of resulted in a miscarriage of justice. MCL 769.26; MSA 28.1096; *People v Bartlett*, 231 Mich App 139, 144; 585 NW2d 341 (1998). A trial court commits error requiring reversal when it gives an instruction that is not warranted by the evidence. *People v Triplett*, 68 Mich App 531, 542; 243 NW2d 665 (1976), rev'd on other grounds 407 Mich 510 (1980); *People v Knox*, 364 Mich 620, 645-646; 111 NW2d 828 (1961). The evidence in this case warranted the instruction.

Evidence of flight is significant evidence that raises an inference of guilt. *People v Cammarata*, 257 Mich 60, 66; 240 NW 14 (1932); *People v Cutchall*, 200 Mich App 396, 398-401; 504 NW2d 666 (1993); *People v Kyles*, 40 Mich App 357, 360; 198 NW2d 732 (1972); *People v Ballard*, 25 Mich App 197, 198; 181 NW2d 9 (1970). Mere departure without fear of apprehension is insufficient to constitute flight. *People v Hall*, 174 Mich App 686, 691; 436 NW2d 446 (1989). However,

leaving the scene with knowledge that police are in pursuit is sufficient. *People v Lonnie Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988).

The evidence in this case established that defendant left the bar before the police arrived. Defendant instructed the person who drove him home to tell anyone who asked that defendant was taken to another bar. When the police arrived at defendant's home, he slammed the door in the face of a uniformed officer after answering it, and then left the premises by crawling out a back window. When the police later found defendant walking nearby, he failed to stop twice when asked to do so by officers. Defendant left his residence suspecting the police were looking for him in regard to this offense. *Lonnie Johnson*, *supra* at 804. Under the circumstances of having just left the crime scene, having admitted to others that he hit Joe Walker, the victim, and having knowledge that the police were just outside his home, it cannot be said that defendant merely departed his home without fear of apprehension. *Hall*, *supra* at 691.

Furthermore, the trial court also instructed the jury that the evidence of flight did not prove guilt and that a person may run or hide for innocent reasons such as panic, mistake, or fear. These instructions were sufficient to protect defendant's rights, *Moldenhauer*, *supra* at 159, and there was no miscarriage of justice, *Bartlett*, *supra* at 144. Thus, the trial court did not err.

II

Next, defendant argues that the evidence was insufficient to find him guilty of involuntary manslaughter because the killing was accidental. We disagree.

Claims of insufficiency of evidence are reviewed by looking at the evidence as a whole in a light most favorable to the prosecution in order to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Jermell Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); citing *People v Hampton*, 407 Mich 354, 367-368; 285 NW2d 284 (1979). Because of the difficulty in proving an actor's state of mind, minimal circumstantial evidence is sufficient, *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984), and circumstantial evidence and the reasonable inferences which arise therefrom can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Involuntary manslaughter requires an unlawful act committed with intent to injure or in a grossly negligent manner proximately causing death. *People v Datema*, 448 Mich 585, 606; 533 NW2d 272 (1995). Gross negligence is established when an objective person of ordinary intelligence: (1) knows or should know that the situation requires the exercise of ordinary care and diligence to avert injury to another; (2) has an ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand; and (3) fails to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. *People v Jackson*, 140 Mich App 283, 285; 364 NW2d 310 (1985), citing *People v Orr*, 243 Mich 300, 307; 220 NW 777 (1928). Gross negligence does not require that the defendant personally be aware of the

danger or that he knowingly or consciously created the danger; it only requires the danger to be apparent to the ordinary mind. *Jackson, supra* at 285.

Defendant argues that evidence was insufficient to convict him of involuntary manslaughter because the killing was accidental and therefore excusable. However, viewing the evidence in a light most favorable to the prosecution, *Jermell Johnson, supra* at 722-723, we find sufficient evidence from which a trier of fact could find beyond a reasonable doubt that defendant's actions were not accidental and that his conduct amounted to gross negligence such that he could be found guilty of involuntary manslaughter. The prosecution offered testimony from several witnesses that defendant said he would "kick Joe's ass" before the incident and that afterward he bragged about hitting Joe. Witnesses also testified that they saw defendant pull the victim up by the collar and heard defendant say Joe was not hurt badly. After the incident, defendant walked back into the bar, leaving customers and employees at the bar to tend to the victim's injuries rather than doing so himself. Defendant then left the scene before the police arrived. Witnesses also testified that they saw blood on the wall behind the victim, as if he had been propped up after sliding down the wall. Furthermore, medical testimony established that the victim sustained skull fractures consistent with three blows to the head, and there was no evidence to suggest that the victim struck anyone with his hands. Conversely, testimony from police established that defendant sustained minor injuries to his hands, suggesting that the victim did not strike a blow, and that the defendant struck several blows during this fight.

A trier of fact could find that an ordinary person, seeing blood behind someone he had just struck, would likely do more than simply prop up the person against a wall and walk away. *Orr, supra* at 307; *Jackson, supra* at 285. The evidence, while circumstantial, was sufficient for a rational trier of fact to find beyond a reasonable doubt that defendant acted with gross negligence and was guilty of involuntary manslaughter.

III

Finally, defendant argues that his sentence, which fell at the high end of the guidelines' recommended range, was disproportionate. We disagree. This Court reviews sentencing decisions for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). An abuse of discretion exists if one who is unprejudiced would conclude there was no justification for the ruling, *People v Malone*, 180 Mich App 347, 354; 447 NW2d 157 (1989), or the result could be said to indicate perversity of will, defiance of judgment, passion or bias, *People v Woods*, 200 Mich App 283, 288; 504 NW2d 24 (1993).

Criminal sentences must be proportionate to the seriousness of the offense and must take into account the circumstances of both the offense and the offender. *Milbourn, supra* at 636. A sentencing court that fails to adhere to the principle of proportionality abuses its discretion. *Id.*; *McCrady, supra* at 483. A sentence that is within the guidelines is presumptively valid and proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v McElhaney*, 215 Mich App 269, 285-286; 545 NW2d 18 (1996); *People v Jones*, 201 Mich App 449, 457; 506 NW2d 542 (1993). A sentence that is within the guidelines may constitute an abuse of discretion only where the

defendant establishes the existence of unusual circumstances. *Milbourn, supra* at 661; *Broden, supra* at 354. The term "unusual circumstances" has been construed to mean "uncommon" or "rare." *Sharp,*192 Mich App 501, 505, 481 NW2d 773 (1992). A defendant's employment, lack of prior criminal record, or minimal culpability do not constitute unusual circumstances. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Defendant was sentenced to 6½ to 15 years (i.e., 78 to 180 months) with 111 days credit for time served. The guidelines' recommended minimum sentence range was 24 to 84 months. Thus, the minimum sentence of 6½ years (78 months) is within the guidelines. Defendant's proffered circumstances of no prior record, remorsefulness, and gainful employment do not amount to uncommon or rare circumstances. Furthermore, the sentencing court did note defendant's mitigating personal characteristics, including his remorse, but also noted the severity of the crime, including the victim's injuries.

Affirmed.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Brian K. Zahra